

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**SB 1865 - HB 1884**

March 8, 2014

**SUMMARY OF BILL:** Requires the Department of Health to establish an independent informal dispute resolution (IIDR) program for nursing homes as required by Section 6111 of the Patient Protection and Affordable Care Act (PPACA). Authorizes a nursing home entitled to an informal dispute if cited for a licensure deficiency to request an IIDR. Requires the department to contract with at least two independent review organizations to conduct the IIDR process and establishes the minimum criteria for the organization. Establishes the required steps for the IIDR process. Requires the department to refer the request to the review organization within five days of the receipt of the written request and acknowledge in writing to the nursing home that the request has been received and forwarded to an independent review organization. Requires the department to notify the involved resident or resident's representative and long-term care ombudsman of their opportunity to submit written comment. Authorizes the nursing home to submit any additional records, information, exhibits, or documents to support its argument, but all documentation must be received by the review organization no later than five working days prior to the IIDR conference.

Requires the independent review organization to hold an IIDR conference within 15 working days following the receipt of the written request for the IIDR process made by a nursing home, unless the nursing home requests additional time. Requires the independent review organization to make a determination within 10 days of the IIDR conference. Establishes the minimum information to be included in the independent review organization's written decision. Requires the department to review the decision within 10 calendar days and provide a written letter as to whether the department accepts or rejects the recommendations made and why such decision was made.

Requires the department to report on the IIDR process to the General Assembly by December 1 of each year.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – Exceeds \$10,000**

**Decrease Federal Expenditures – Exceeds \$10,000**

**Other Fiscal Impact – According to the Department of Health, contracting with independent review organizations could result in an increase expenditures ranging from \$2,000 to \$250,000.**

Assumptions:

- According to the Department of Health, the Department was required to develop an IIDR hearing process for nursing homes to dispute certain cited federal certification deficiencies, and submit the plan for the hearing process to the Centers for Medicare and Medicaid Services (CMS) by November 30, 2011.
- Federal guidance on the mandated IIDR process issued December 2, 2011, requires that if the state has a law or regulation obliging the state to offer an IIDR, specifies a manner in which an IIDR is to be provided, or specifies who must provide the IIDR, then the state is responsible for covering approximately 33 percent of the cost of such hearings and requires the state to assume 100 percent of the costs for any state licensure IIDRs. Without a state law being in place, the state is only responsible for covering approximately 12.5 percent of the cost of the hearings and the federal government covers the remaining 87.5 percent. The Department received an official letter of approval from CMS for the state's revised IIDR plan on February 11, 2012.
- Since the provisions of the bill will codify requirements for an IIDR hearing process that does not comply with CMS requirements and regulations, the amount of hearing costs the state is required to cover will increase from 12.5 percent to 33 percent.
- According to the department, the total costs for the current process for the five IIDRs conducted in 2012 were \$5,055.95 and for the seven IIDRs conducted in 2013 were \$7,550.45.
- Under the proposed bill, the state would have incurred an increase in state expenditures of \$2,584.31  $\{[(\$5,055.95 + \$7,550.45) \times 33\%] - [(\$5,055.95 + \$7,550.45) \times 12.5\%]\}$ .
- The federal government recently authorized IIDRs to be conducted on all federal certification deficiencies and not simply those for which a federal civil monetary penalty was cited which the department expects to increase the number of IIDRs.
- The proposed law will increase the number of state licensure deficiency IIDRs that are not currently authorized by the federal act.
- With the expected increase in IIDR requests, it is reasonably estimated that the recurring increase in state expenditures due to the increased percentage of the state share is reasonably estimated to exceed \$10,000.
- According to the department, the actual costs to implement the bill's provisions cannot be determined until proposals for the independent review organizations are received under the request for proposal process. Based on information from other states the department received, the costs for one contracted accredited reviewing entity's services showed a range in costs from \$2,000 - \$250,000.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

/kml